Rules Committee in the 109th Congress, (page 56). Here's how the Rules Committee described the rule using information from Congressional Quarterly's ''American Congressional Dictionary'': ''If the previous question is defeated, control of debate shifts to the leading opposition member (usually the minority Floor Manager) who then manages an hour of debate and may offer a germane amendment to the pending business.''

Deschler's Procedure in the U.S. House of Representatives, the subchapter titled ''Amending Special Rules'' states: ''a refusal to order the previous question on such a rule [a special rule reported from the Committee on Rules] opens the resolution to amendment and further debate.'' (Chapter 21, section 21.2) Section 21.3 continues: ''Upon rejection of the motion for the previous question on a resolution reported from the Committee on Rules, control shifts to the Member leading the opposition to the previous question, who may offer a proper amendment or motion and who controls the time for debate thereon.''

Clearly, the vote on the previous question on a rule does have substantive policy implications. It is one of the only available tools for those who oppose the Democratic majority's agenda and allows those with alternative views the opportunity to offer an alternative plan.

Mr. WELCH of Vermont. Madam Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WELCH of Vermont. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question are postponed.

PROVIDING FOR CONSIDERATION OF H.R. 2102, FREE FLOW OF INFORMATION ACT OF 2007

Ms. SLAUGHTER. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 742 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 742

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 2102) to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media. All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. The amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill shall be considered as adopted. The bill, as amended, shall be considered as read. All points of order against provisions of the bill, as amended, are waived. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except: (1) one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; (2) the amendment printed in the report of the Committee on Rules, if offered by Representative Boucher of Virginia or his designee, which shall be in order without intervention of any point of order (except those arising under clause 9 or 10 of rule XXI) or demand for division of the question, shall be considered as read, and shall be separately debatable for ten minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

SEC. 2. During consideration of H.R. 2102 pursuant to this resolution, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to such time as may be designated by the Speaker.

□ 1130

The SPEAKER pro tempore. The gentlewoman from New York is recognized for 1 hour.

Ms. SLAUGHTER. Madam Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. DIAZ-BALART). All time yielded during consideration of the rule is for debate only.

GENERAL LEAVE

Ms. SLAUGHTER. Madam Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and insert extraneous materials into the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from New York?

There was no objection.

Ms. SLAUGHTER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H. Res. 742 provides for consideration of H.R. 2102, the Free Flow of Information Act, under a structured rule. The rule provides 1 hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

I rise to speak today on one of the most critical issues that faces our democracy, the freedom of the press and the sacred historic protection afforded to journalists allowing them not to reveal their sources.

Understanding this, in 1799, one of our Founding Fathers, Thomas Jefferson, said, ''Our citizens may be deceived for a while, and have been deceived; but as long as the presses can be protected, we may trust to them for light.''

Madam Speaker, with the birth of this new Nation came a government that was designed to be open and transparent to its people and held accountable for its actions. America's Founding Fathers established and implemented a system of checks and balances to ensure that one branch of government could not unilaterally impose its will on the others, aggressively overstep its authority, or greedily infringe upon the rights of its citizens.

Beyond the checks and balances of government is an often overlooked, but equally important, element of our system: the freedom of the press. Embodied in the first amendment, this right grants active citizens and vocal journalists the power to expose corruption and misbehavior committed by those elected and appointed to office. They serve as protectors of our democracy and work to make up for our system's failings where they exist.

Ensuring the free flow of information and providing protection for whistleblowers is vital to a free society. The Watergate scandal epitomized the value of the free press and, with it, the need to protect the relationship between journalists and their confidential sources.

For a moment, I would like my colleagues to consider a reality in which journalists could routinely be forced to reveal the names of their informants, and where sources could undoubtedly become reluctant to share important information that is unknown to the public.

Think of the scandals that journalists have revealed just in the last few years: The Central Intelligence Agency's clandestine prisons across Eastern Europe; Jack Abramoff's trading expensive troops for political favor from lawmakers; our veterans returning home from Iraq and Afghanistan to dilapidated, unsafe, unsanitary facilities at Walter Reed Medical Center. Make no mistake, confidential sources made these reports possible.

And I would be remiss if I did not ask my colleagues, would we rather be unaware of these incidents because shield laws don't exist and our reporters are too afraid of prosecution when doing their jobs?

The past 6 years have produced one disturbing reminder after another that the legitimacy of our government and the integrity of our democracy are dependent on the ability of journalists to protect their sources. From uncovering the horrifying incidents of detainee abuse at Abu Ghraib to revealing the administration's covert domestic spying program, the press managed to expose illegal actions by the executive branch when Congress refused to do so.

The public has long valued this relationship as critical to the functioning of an open and free media. Unfortunately, the court record has been more mixed.

In December of 1972, the Supreme Court ruled that the journalist-source relationship is not protected under the Constitution. That ruling has allowed journalists to be forced to testify before grand juries about their sources. In response, individual States across the country enacted their own journalist shield laws to guarantee that a member of the press can continue to maintain their anonymous sources without fear of prosecution.

In fact, 49 States and the District of Columbia all provide some form of shield law. But there is still no Federal statute providing uniformity. Now, recent Federal court cases are, again,

challenging the critically important relationship between journalists and their sources, arguing that State interests supersede those of a free press.

And according to The Washington Post, in recent years, more than 40 reporters have been questioned about their sources, notes and stories in civil and criminal cases.

The Free Flow of Information Act before us today would, for the first time on the Federal level, explicitly protect journalists and their sources from the kind of vengeful legal actions that threaten to keep all those necessary whistles unblown.

Unless Congress passes a comprehensive shield law that will guarantee the rights of journalists to speak with anonymous sources and ensure their confidentiality, the freedom of the press will be undermined along with the public good it has the power to defend. Any such bill must, of course, take into account the legitimate needs of our government, and this bill does that.

Madam Speaker, should we in any way compromise the freedom of the press, we will deny our citizens their right to be informed about their government and retreat from the true nature of the political system that made our government unique. Our forefathers saw fit to enshrine this belief in the very first sentences of our Bill of Rights, and this Congress must continue to guarantee those rights.

And today, Madam Speaker, as we debate extending these protections to the press, we must pause to remind the press of their obligation to the public.

I regret to say that, for much of the recent past, some of the press, which was intended to be the watchdog of our government, quickly transformed into nothing more than a mouthpiece, exemplified in its coverage and lack of questions on the Iraq war.

Madam Speaker, we saw time and time again the tough questions expected by the American people before and after the invasion in Iraq replaced with nothing more than patriotic propaganda and White House talking points.

Embedded journalists were fed information and painted rosy scenarios of our invasion and occupation. Those who were skeptical and challenged this spoon-fed information were discredited and sometimes even fired for so much as questioning the actions of the war and this government.

Thomas Jefferson said, again, and I quote, ''The press is impotent when it abandons itself to falsehood.''

With all the wonderful protections of the first amendment of the Constitution of the United States, the press must not only be vigilant, but it must be courageous.

And we all remember that it is the prime directive of the press to inform the people. It is their duty to ask the tough questions when the American people are unable to do so. It is their responsibility to shine light on government actions, secret or mundane, and to hold it accountable.

And let me finish by asking this simple question. Will the press pay as much attention to Blackwater as they did to Whitewater? I certainly hope so.

Madam Speaker, I reserve the balance of my time.

Mr. LINCOLN DIAZ-BALART of Florida. Madam Speaker, I would like to thank the distinguished Chair of the Rules Committee (Ms. SLAUGHTER) for the time, and I yield myself such time as I may consume.

One of the Founding Fathers of the Nation, whose likeness is above your chair, Madam Speaker, George Mason, said that ''the freedom of the press is a great bulwark of liberty.''

It does act as a bulwark of liberty by often checking governmental power. In order to gather and publish news stories, journalists often find it necessary to protect their sources. So if a journalist is forced to reveal his or her sources through legal proceedings, that has a chilling effect on other sources. And such a chilling effect ultimately may harm the public interest.

Under current law, Madam Speaker, courts have the power to force testimony from individuals unless they can cite a specific ground, such as the lawyer-client or the physician-patient privilege. It is in the public interest to have such privileges, and I think it should be possible to provide journalists, that's what this legislation is trying to do, and their sources with some reasonable protections, because currently there is no privilege for journalists to refuse to appear and testify in legal proceedings.

As the distinguished Chair of the Rules Committee stated, 49 States and the District of Columbia have various statutes or follow judicial decisions that have the effect of protecting reporters from being compelled to testify or disclose their sources. The underlying legislation would set a national standard similar to those that are in effect in the various States.

In determining whether to require testimony by a member of the news media, it is appropriate to strike a balance between the public's interest in the free dissemination of information and the public's interest in effective law enforcement and the fair administration of justice.

So the underlying legislation attempts to strike this balance by providing a privilege to journalists that prevents them from being forced to testify or disclose sources in legal proceedings. But, however, the privilege is not absolute. It contains exceptions where it is necessary to reveal a source to prevent an act of terrorism or other significant and specified harm to national security or imminent death or significant bodily harm.

I think it's appropriate, and I want to emphasize my gratitude to Representative PENCE for his hard work and dedication on this important issue. He has been not only studying it, but working on this critical issue, really, a critical issue related to our freedom for years, and so as I thank him, I urge Members to support the legislation that he's been working on so diligently for so long.

The rule we are debating now, Madam Speaker, only allows for a manager's amendment, which, as you know, is an amendment for the majority to make final changes in a bill. So the rule is essentially a closed rule. Only one other amendment was submitted to the Rules Committee, but the majority decided, on a party-line vote, to exclude the amendment and not make possible the debate of that amendment on the floor.

I understand that the authors of the bill feel that that amendment, which was submitted by the distinguished ranking member of the Judiciary Committee (Mr. SMITH), the authors of the bill believe that that amendment would go counter, would be counter to much of the essence of the bill. But, in my view, that doesn't mean that we should preclude or prevent consideration of the amendment.

□ 1145

Even Mr. PENCE, the author and champion of the underlying legislation, who opposes the Smith amendment, testified at the Rules Committee that the amendment should definitely have an opportunity to be considered by the House.

The amendment includes many of the concerns that the Justice Department has had throughout the long period of time with parts of the underlying legislation. It is a serious amendment, and it certainly deserves to be debated on the floor.

So I think it is unfortunate, and as we bring this important legislation once again, it is an example of bringing important legislation to the floor excluding, making impossible, serious debate of ideas that differ by Members of this House. So that's unfortunate, and that is why I oppose the rule that is bringing forth this important legislation. I certainly support the underlying legislation, but I think that it is unfortunate that we once again have an overly restrictive process for bringing forth this legislation.

Madam Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Madam Speaker, I yield 2 minutes to the gentleman from Vermont (Mr. WELCH).

Mr. WELCH of Vermont. I thank the distinguished Chair and the good work of my friend from Florida.

Madam Speaker, I rise today in support of Resolution 742, the rule providing for the consideration of H.R. 2102, the Free Flow of Information Act.

This important legislation protects the public's right to know while at the same time honoring the public interest in having reporters testify in certain circumstances. While news organizations prefer to have their sources on the record whenever that is possible,

we all know there are times when sources will simply not come forward without the promise of confidentiality, and that's in the public interest to get the information those sources have. Consider groundbreaking stories such as conditions at Walter Reed, Abu Ghraib, the Enron scandal, steroid abuse in the Major Leagues would not have been known to the public or the Congress without confidential sources. And over the past few years, more than 40 reporters and media organizations have been subpoenaed or questioned about their confidential sources, their notes, and their work product in criminal and civil cases in Federal court.

The need for this legislation was underscored when on August 13 a Federal judge ordered five more reporters from major news organizations to reveal their confidential sources in the privacy lawsuit filed by Dr. Steven Hatfill against the Federal Government.

If sources, including public and private sector whistleblowers, are uncertain whether reporters have adequate protection, they won't come forward in the public dialogue and important issues will diminish.

The shield is qualified, as it must be. If the information possessed by the journalist is necessary to prevent an act of terrorism, imminent death or significant bodily injury, or harm to national security, disclosure can be compelled.

While 49 States and the District of Columbia recognize a reporter's privilege through statute or common law, no uniform Federal standard exists to govern when testimony can be sought from reporters. Journalists should be the last resort, not the first stop, for civil litigants and prosecutors attempting to obtain the identity of confidential sources.

I urge my colleagues to vote ''yes'' on H. Res. 742 and ''yes'' on the underlying bill.

Mr. LINCOLN DIAZ-BALART of Florida. Madam Speaker, it is my privilege at this time to yield 3 minutes to a great leader in this House, our colleague from Florida (Mr. KELLER).

Mr. KELLER of Florida. I thank the gentleman for yielding.

Madam Speaker, I rise in strong support of the Free Flow of Information Act.

This media shield legislation is important because ''off the record'' confidential sources are needed to help journalists get to the truth, and I don't want reporters thrown in jail for doing their jobs.

Our history is full of examples of confidential sources exposing corruption, fraud, and misconduct. For example, the Watergate scandal was blown wide open by Deep Throat, a confidential source we now know to be Mark Felt, the number two person at the FBI. Confidential sources also exposed the cooked books at Enron and the unacceptable treatment of soldiers recovering at Walter Reed.

Whistleblowers, with inside knowledge of corruption, might be discouraged from talking to reporters if they fear their identities might be disclosed and their jobs placed at risk. That's why protecting the public's right to know is needed for a healthy democracy. That is also why a majority of the States already have media shield laws on the books and why we need this law on the Federal level.

The media shield privilege under this bill is not absolute. Exceptions are carved out where it is necessary to reveal a source in order to prevent imminent death or bodily harm, terrorist attacks, or other specific threats to national security. The bill also includes the language I drafted, which provides an exception for civil defamation claims. This language, found in section 2(C) of the bill, is modeled after language found in various State media shield laws such as those in Tennessee and Oklahoma dealing with this issue.

Finally, I want to thank my colleagues, especially Mr. PENCE and Mr. BOUCHER, for their impressive bipartisan leadership and hard work on this important bill. It was my honor to work closely with them on the drafting of this legislation during the Judiciary Committee process.

Madam Speaker, the bottom line is that a free and independent press is critical to ensure government accountability. I urge my colleagues to protect the public's right to know and vote ''yes'' on H.R. 2102.

Ms. SLAUGHTER. Madam Speaker, I reserve the balance of my time.

Mr. LINCOLN DIAZ-BALART of Florida. Madam Speaker, it is my privilege to yield 8 minutes to someone who has been working long and hard on this important issue and deserves much commendation, my dear friend Mr. PENCE of Indiana.

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. I thank the gentleman for yielding.

Madam Speaker, 3 years ago this month, I read a newspaper editorial decrying a growing trend of cases where reporters were being subpoenaed and threatened with jail time to reveal confidential sources. The article also lamented how Republicans in Congress would never support such a statute to shield reporters in those cases.

The next day I asked my congressional staff two questions: First, I asked, what's a Federal media shield statute? And next I asked, tell me what I will never do. And it was in that moment of challenge and inquiry that the Free Flow of Information Act was born.

Shortly thereafter I partnered with the gentleman from Virginia, Congressman RICK BOUCHER, the lead sponsor of this legislation today. And the legislation that we will bring to the floor of the House of Representatives this afternoon is a direct result of a bipartisan partnership that has been a singular personal and professional pleasure for me. It is indeed humbling for me to work with Mr. BOUCHER, Chairman CONYERS, and colleagues on both sides of the aisle to truly put a stitch in what I believe is a tear in the fabric of the Bill of Rights.

When the Free Flow of Information Act passed out of the Judiciary Committee on August 1, 2007, Mr. Speaker, I was informed that in the past 30-odd years approximately 100 Federal media shield statutes had been introduced in Congress. But the Free Flow of Information Act is the first of those to be passed out of the committee, and it will be the first Federal media shield bill to ever be considered by the House. It is arguable, in fact, that the Free Flow of Information Act is the first Federal legislation regarding the freedom of the press since the words ''Congress shall make no law abridging the freedom of speech or of the press'' were added to the Constitution. As such, and I say humbly, passage of this legislation today would be both momentous and historic.

So what's a conservative like me doing passing a bill that helps reporters? I have been asked that question many times.

It would be Colonel Robert McCormick, the grandson of the founder of the Chicago Tribune, who once said: ''The newspaper is an institution developed by modern civilization to present the news of the day and to furnish that check upon government which no Constitution has ever been able to provide.''

As a conservative who believes in limited government, I believe the only check on government power in real-time is a free and independent press. The Free Flow of Information Act is not about protecting reporters. It is about protecting the public's right to know.

Thomas Jefferson warned that ''our liberty cannot be guarded but by the freedom of the press, nor that limited without danger of losing it.'' Today, the Congress has the opportunity to heed President Jefferson's words and take this important step towards strengthening our first amendment, a free and independent press.

Not long ago a reporter's assurance of confidentiality was unquestionable. That assurance led to sources who provided information to journalists who brought forward news of great consequence to the Nation, like Watergate, where government corruption and misdeeds were brought to light by the dogged persistence of Woodward and Bernstein.

However, the press cannot currently make the same assurance of confidentiality to sources today, and we face a real danger that there may never be another Deep Throat. In recent years, reporters like Judith Miller have been jailed, James Taricani placed on house arrest, Mark Fainaru-Wada and Lance Williams threatened with jail. The protections provided by the Free Flow of

Information Act, I submit, are necessary so that members of the media can bring forward information to the public without fear of retribution or prosecution and, more importantly, so that sources will continue to come forward.

Compelling reporters to testify, and in particular compelling them to reveal the identity of confidential sources, is a detriment to the public interest. Without the promise of confidentiality, many important conduits of information about our government will be shut down. The dissemination of information by the media to the public on matters ranging from the operation of our government to events in our local communities is invaluable to the operation of democracy. Without the free flow of information from sources to reporters, the public will be ill prepared to make informed choices.

Which is not to say the press is always without fault, as the chairman of the Rules Committee said just moments ago, or always gets the story right. In fact, President James Madison wrote: ''To the press alone checkered as it is with abuses, the world is indebted for all the triumphs that have been gained by reason and humanity over error and oppression.''

As a conservative, I believe that concentrations of power should be subject to great scrutiny. Integrity in government is not a Democrat or Republican issue, and corruption cannot be laid at the feet of one party. But when scandal hits either party, any branch of government, or any institution, our society is wounded.

The longer I serve in Congress, the more firmly I believe in the wisdom of our Founders, especially as it pertains to the accountability that comes in a free and independent press.

And it is important to note this legislation is not a radical step. Thirty-two States and the District of Columbia have various statutes to protect reporters from being compelled to testify and disclose confidential sources. And the Free Flow of Information Act, I would say to all of my colleagues, has been carefully drafted after reviewing internal Department of Justice guidelines, State shield laws, and gathering input from many talented members on the Judiciary Committee and throughout the Congress. It puts forward only a qualified privilege for journalists to protect sources and strikes an appropriate balance between the public's need for information and the fair administration of justice.

In most instances under our legislation, a reporter will be able to use the shield provided in the bill to refrain from testifying or providing documents. But testimony or documents can be forced under certain circumstances if all reasonable alternatives have been exhausted and the document or testimony is critical to criminal prosecutions. A reporter may also be asked to reveal the identity of a confidential source in very specific and exceptional cases. And the manager's amendment we will consider today will add even additional exceptions.

Lastly, Mr. Speaker, let my say how humbling it is for me to have played a small role in moving this legislation forward. From my youth I have enjoyed a fascination with freedom and with the American Constitution. I learned early on that freedom's work is never finished, that it falls on each generation of Americans to preserve, protect, and defend our freedom as those who have bequeathed it to us did in their time.

The banner of the Indianapolis Star, the newspaper of record in my home State, quotes a verse from the Bible that reads: ''Where the spirit of the Lord is, there is freedom.'' As I opened my Bible this morning for devotions, it was that verse that just happened to be in my daily readings.

□ 1200

It reminded me that when we do freedom's work, like putting this stitch in a tear in the fabric of the Bill of Rights, His work has truly become our own.

I ask all of my colleagues in both parties to join us today in freedom's unfinished work. Say ''yes'' to a free and independent press. Vote ''yes'' on the Free Flow of Information Act.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I will be asking for a ''no'' vote on the previous question so that we can amend this rule and allow the House to consider a change to the rules of the House to restore accountability and enforceability to the earmark rule.

Under the current rule, so long as the chairman of the Committee of Jurisdiction includes either a list of earmarks contained in the bill or report or a statement that there are no earmarks, no point of order lies against the bill. This is the same as the rule in the last Congress. However, under the rule as it functioned under the Republican majority in the 109th Congress, even if the point of order was not available on the bill, it was always available on the rule as a question of consideration. But because the new Rules Committee majority specifically exempts earmarks from the waiver of all points of order, they deprive Members of the ability to raise the question of earmarks on the rule or on the bill.

I would like to direct all Members to a letter that House Parliamentarian JOHN SULLIVAN recently sent to the distinguished Chair of the Rules Committee, Ms. SLAUGHTER, which confirms what we have been saying since January, that the Democratic earmark rule contains loopholes.

In his letter to the distinguished chairman, the Parliamentarian states that the Democratic earmark rule ''does not comprehensively apply to all legislative propositions at all stages of the legislative process.''

I will insert this letter from the House Parliamentarian, JOHN SULLIVAN, into the RECORD.

HOUSE OF REPRESENTATIVES,
OFFICE OF THE PARLIAMENTARIAN,
Washington, DC, October 2, 2007.

Hon. LOUISE MCINTOSH SLAUGHTER,
Committee on Rules, House of Representatives, Washington, DC.

DEAR CHAIRWOMAN SLAUGHTER: Thank you for your letter of October 2, 2007, asking for an elucidation of our advice on how best to word a special rule. As you also know, we have advised the committee that language waiving all points of order ''except those arising under clause 9 of rule XXI'' should not be adopted as boilerplate for all special rules, notwithstanding that the committee may be resolved not to recommend that the House waive the earmark-disclosure requirements of clause 9.

In rule XXI, clause 9(a) establishes a point of order against undisclosed earmarks in certain measures and clause 9(b) establishes a point of order against a special rule that waives the application of clause 9(a). As illuminated in the rulings of September 25 and 27, 2007, clause 9(a) of rule XXI does not comprehensively apply to all legislative propositions at all stages of the legislative process.

Clause 9(a) addresses the disclosure of earmarks in a bill or joint resolution, in a conference report on a bill or joint resolution, or in a so-called ''manager's amendment'' to a bill or joint resolution. Other forms of amendment—whether they be floor amendments during initial House consideration or later amendments between the Houses—are not covered. (One might surmise that those who developed the rule felt that proposals to amend are naturally subject to immediate peer review, though they harbored reservations about the so-called ''manager's amendment,'' i.e., one offered at the outset of consideration for amendment by a member of a committee of initial referral under the terms of a special rule.)

The. question of order on September 25 involved a special rule providing for a motion to dispose of an amendment between the Houses. As such, clause 9(a) was inapposite. It had no application to the motion in the first instance. Accordingly, Speaker pro tempore Holden held that the special rule had no tendency to waive any application of clause 9(a). The question of order on September 27 involved a special rule providing (in pertinent part) that an amendment be considered as adopted. Speaker pro tempore Blumenauer employed the same rationale to hold that, because clause 9(a) had no application to the amendment in the first instance, the special rule had no tendency to waive any application of clause 9(a).

The same would be true in the more common case of a committee amendment in the nature of a substitute made in order as original text for the purpose of further amendment. Clause 9(a) of rule XXI is inapposite to such an amendment.

In none of these scenarios would a ruling by a presiding officer hold that earmarks are or are not included in a particular measure or proposition Under clause 9(b) of rule XXI, the threshold question for the Chair—the cognizability of a point of order—turns on whether the earmark-disclosure requirements of clause 9(a) of rule XXI apply to the object of the special rule in the first place. Embedded in the question whether a special rule waives the application of clause 9(a) is the question whether clause 9(a) has any application.

In these cases to which clause 9 of rule XXI has no application in the first instance, stating a waiver of all points of order except those arising under that rule—when none can so arise—would be, at best, gratuitous. Its negative implication would be that such a point of order might lie. That would be as

confusing as a waiver of all points of order against provisions of an authorization bill except those that can only arise in the case of a general appropriation bill (e.g., clause 2 of rule XXI). Both in this area and as a general principle, we try hard not to use language that yields a misleading implication.

I appreciate your consideration and trust that this response is to be shared among all members of the committee. Our office will share it with all inquiring parties.

Sincerely,

JOHN V. SULLIVAN,
Parliamentarian.

This amendment, Mr. Speaker, will restore the accountability and the enforceability of the earmark rule to where it was at the end of the 109th Congress, to provide Members with an opportunity to bring the question of earmarks before the House for a vote.

I urge my colleagues to close this loophole by opposing the previous question.

Mr. Speaker, I ask unanimous consent to insert the text of the amendment and extraneous materials immediately prior to the vote on the previous question.

The SPEAKER pro tempore (Mr. CAPUANO). Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I yield back the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I think this is a momentous day for the House. We have before us today a resolution that has been approved by both sides of the aisle, worked on with great consideration as concerns the Constitution. We are very happy to present it today. We think its importance is certainly easily explained and necessary.

I urge a ''yes'' vote on the previous question and on the rule.

The material previously referred to by Mr. LINCOLN DIAZ-BALART of Florida is as follows:

AMENDMENT TO H. RES. 742 OFFERED BY MR. LINCOLN DIAZ-BALART OF FLORIDA

At the end of the resolution, add the following:

SEC. 3. That immediately upon the adoption of this resolution the House shall, without intervention of any point of order, consider the resolution (H. Res. 479) to amend the Rules of the House of Representatives to provide for enforcement of clause 9 of rule XXI of the Rules of the House of Representatives. The resolution shall be considered as read. The previous question shall be considered as ordered on the resolution to final adoption without intervening motion or demand for division of the question except: (1) one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Rules; and (2) one motion to recommit.

(The information contained herein was provided by Democratic Minority on multiple occasions throughout the 109th Congress.)

THE VOTE ON THE PREVIOUS QUESTION: WHAT IT REALLY MEANS

This vote, the vote on whether to order the previous question on a special rule, is not merely a procedural vote. A vote against ordering the previous question is a vote against the Democratic majority agenda and a vote to allow the opposition, at least for the moment, to offer an alternative plan. It is a vote about what the House should be debating.

Mr. Clarence Cannon's Precedents of the House of Representatives, (VI, 308–311) describes the vote on the previous question on the rule as ''a motion to direct or control the consideration of the subject before the House being made by the Member in charge.'' To defeat the previous question is to give the opposition a chance to decide the subject before the House. Cannon cites the Speaker's ruling of January 13, 1920, to the effect that ''the refusal of the House to sustain the demand for the previous question passes the control of the resolution to the opposition'' in order to offer an amendment. On March 15, 1909, a member of the majority party offered a rule resolution. The House defeated the previous question and a member of the opposition rose to a parliamentary inquiry, asking who was entitled to recognition. Speaker Joseph G. Cannon (R–Illinois) said: ''The previous question having been refused, the gentleman from New York, Mr. Fitzgerald who had asked the gentleman to yield to him for an amendment, is entitled to the first recognition.''

Because the vote today may look bad for the Democratic majority they will say ''the vote on the previous question is simply a vote on whether to proceed to an immediate vote on adopting the resolution ..... [and] has no substantive legislative or policy implications whatsoever.'' But that is not what they have always said. Listen to the definition of the previous question used in the Floor Procedures Manual published by the Rules Committee in the 109th Congress (page 56). Here's how the Rules Committee described the rule using information from Congressional Quarterly's ''American Congressional Dictionary'': ''If the previous question is defeated, control of debate shifts to the leading opposition member (usually the minority Floor Manager) who then manages an hour of debate and may offer a germane amendment to the pending business.''

Deschler's Procedure in the U.S. House of Representatives, the subchapter titled ''Amending Special Rules'' states: ''a refusal to order the previous question on such a rule [a special rule reported from the Committee on Rules] opens the resolution to amendment and further debate.'' (Chapter 21, section 21.2) Section 21.3 continues: Upon rejection of the motion for the previous question on a resolution reported from the Committee on Rules, control shifts to the Member leading the opposition to the previous question, who may offer a proper amendment or motion and who controls the time for debate thereon.''

Clearly, the vote on the previous question on a rule does have substantive policy implications. It is one of the only available tools for those who oppose the Democratic majority's agenda and allows those with alternative views the opportunity to offer an alternative plan.

Ms. SLAUGHTER. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken later today.

INTERNET TAX FREEDOM ACT AMENDMENTS ACT OF 2007

Mr. WATT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3678) to amend the Internet Tax Freedom Act to extend the moratorium on certain taxes relating to the Internet and to electronic commerce, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 3678

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Freedom Act Amendments Act of 2007''.

SEC. 2. MORATORIUM.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) in section 1101(a) by striking ''2007'' and inserting ''2011'', and

(2) in section 1104(a)(2)(A) by striking ''2007'' and inserting ''2011''.

SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

Section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

''(c) APPLICATION OF DEFINITION.—

''(1) IN GENERAL.—Effective as of November 1, 2003—

''(A) for purposes of subsection (a), the term 'Internet access' shall have the meaning given such term by section 1104(5) of this Act, as enacted on October 21, 1998; and

''(B) for purposes of subsection (b), the term 'Internet access' shall have the meaning given such term by section 1104(5) of this Act as enacted on October 21, 1998, and amended by section 2(c) of the Internet Tax Nondiscrimination Act (Public Law 108–435).

''(2) EXCEPTIONS.—Paragraph (1) shall not apply until November 1, 2007, to a tax on Internet access that is—

''(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate administrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

''(B) the subject of litigation instituted in a judicial court of competent jurisdiction prior to July 1, 2007, in which a State or political subdivision is seeking to enforce, in a manner that is inconsistent with paragraph (1), such tax on telecommunications service purchased, used, or sold by a provider of Internet access.

''(3) NO INFERENCE.—No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5)